

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the California Public Utilities)	CC Docket No. 99-200
Commission For Authority to Implement)	
Technology-Specific Overlays)	

To: The Wireless Telecommunications Bureau

REPLY COMMENTS

Rural Cellular Association (“RCA”)¹, by its attorneys, respectfully submits these Reply Comments in response to the invitation of the Wireless Telecommunications Bureau (“the Bureau”)² to reply to Comments filed on the Petition of the California Public Utilities Commission (“Petition”). The Petition was filed on September 27, 2002 with the Federal Communications Commission (“FCC” or “Commission”), and Comments were submitted by November 25, 2002. The Commission seeks to assess the proposal as part of its case-by-case review, in light of the Commission’s rules and policies and considering how another form of area code relief, such as an all-services overlay, might better serve the public interest and offer superior numbering resource optimization benefits.

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

² *Wireless Telecommunications Bureau Seeks Comment on Report on the Petition of the California Public Utilities Commission for Authority to Implement Technology-Specific Overlays*, Public Notice, CC Docket No. 99-200, DA 02-2845, released October 24, 2002.

I. Introduction

RCA supports those parties who filed Comments in opposition to the Petition of the California Public Utilities Commission (“CPUC”) wherein the CPUC proposed to implement Technology-Specific Overlay (“TSO”) Codes in the 310 and 909 Number Plan Areas (“NPAs”) in Orange County, California. RCA opposes the proposal because it imposes upon wireless carriers and their subscribers the sole burden and sacrifice necessary to achieve area code relief in Orange County. The proposal is discriminatory, anti-competitive and illogical.

II. The TSO Is Not a Justifiable Approach to Area Code Relief

The Commenters generally concur that the CPUC has not demonstrated to the FCC why the TSO is a superior approach to the all-services overlay, and that the CPUC has presented no cost/benefit analysis of the advantages of the TSO over the traditional methods of area code relief. RCA agrees with the conclusions of AT&T Wireless Services, Inc. (“AWS”) and others that the CPUC’s Petition is procedurally deficient. It offers no consumer support for the TSO, no incentives to wireless providers and customers to give up their telephone numbers, and no phase-in approach that will ease the burden of compliance.

Rather, the CPUC proposes what the Cellular Telecommunications & Internet Association (“CTIA”) accurately describes as massive inconvenience for 3 million wireless customers and all those who call them. Verizon Wireless explains that millions of wireless customers would be required to have their phones reprogrammed, and would need to change their stationery, signage and business cards. As noted by AWS, the wireless users are particularly disadvantaged in notifying callers of the number change because of the lack of printed directories or directory assistance for wireless numbers. The proposal thus places wireless carriers at a competitive disadvantage to their

wireline counterparts, who will continue to have access to the more desirable numbers. Beyond that, as stated by Christopher Munn, the TSO would be consuming, expensive and sometimes life threatening. The fiscal costs and loss of productivity in the already fragile California economy could be devastating. Such is the nature of take-backs, and the reason for their scrutiny.

The burden of TSO transition is not alleviated by the CPUC's proposal for a two-year transition period. Verizon Wireless comments that most of that period will be spent reprogramming phones and educating the public. By the time that effort is completed the TSO will have expired, rendering useless the entire exercise. Worse, a second program will have to be conducted to help people unlearn the TSO and the reasons why their telephone numbers were taken back (numbers which would be available again if not assigned to another user during the transition period).

Nextel Communications, Inc. ("Nextel") put it simply that while the CPUC denies that the area code change is a take-back, it is a take-back because the wireless customer's telephone number changes. The take-back would create significant disruptions to wireless subscribers and cause unnecessary client dissatisfaction. RCA supports the Comments of United States Cellular Corporation that wireless customers and their callers would be needlessly confused and inconvenienced in a discriminatory manner for which the CPUC provides no reasoned foundation.

RCA agrees with CTIA that the TSO would discourage the inter-modal wireline-to-wireless competition that the Commission has sought to foster in many ways, recently by requiring wireless carriers to support Local Number Portability ("LNP"). Wireless customers will be able to order a new wireline number in the 310 or 909 area codes and immediately port it to a wireless carrier, defeating the purpose of the TSO. Now that wireless carriers have made the investments necessary

to participate in thousands-block number pooling, the CPUC must be prevented from implementing a TSO which would constrain wireless carriers to pool only with other wireless carriers in the TSO.

Cingular Wireless LLC points out that the CPUC fails to explain how it will segregate all “transparent” or “non-geographic” numbers into a TSO, and that it does not specify how the affected numbers will be identified. Several carrier Commenters confirmed that their customers do not inform them of which phone numbers are being used for faxes, modems or other non-voice purposes. J2Global Communications, Inc. adds that these types of services do not carry a unique class of service designation in carriers’ records. OnStar Corporation reasonably objects to having its services targeted by CPUC as non-geographically sensitive, given that its customers often request a specific NPA NXX.

Given these concerns, the CPUC should admit that implementing the proposed TSO is shaping up to be an administrative impossibility. It cannot distinguish between landline and wireless customers in an LNP environment. Nor can it reliably identify which phone numbers are currently connected to which instruments, or which instruments are capable of which functions. The TSO is fraught with impracticality and burdened by its innate unfairness to wireless subscribers and carriers. Any viability that the CPUC’s proposal ever had has been overridden by the circumstances of today’s telecommunications environment.

III. An All-Services Overlay Is the Optimum Solution for Orange County, California

One great advantage of the all-services overlay is that no customer is required to change telephone numbers. It is also a solution that can be implemented in the little time before the existing area codes reach exhaust. Most importantly, the all-services overlay would maximize the number of participants in number pooling, making eight million numbers available to all carriers in the area

covered by the new NPA. Sprint Corporation illustrates that the TSO, on the other hand, wastes numbers by making them available to only a subset of carriers. RCA agrees with the conclusion that the CPUC has not, and cannot, justify the TSO under a number resourcing rationale.

IV. Seven-Digit Dialing in Orange County Is Not Sustainable Under the Circumstances

As disclosed in the comments of The Utility Reform Network (“TURN”), the reason the CPUC requested a permanent waiver to maintain seven-digit dialing is because the California legislature demanded that it do so. Public pressure precipitated that action. Of all places in America, the Los Angeles area is the least likely to be able to maintain seven-digit dialing. Ten-digit dialing has become the norm even in rural areas of the country. Contrary to the Comments of TURN that ten-digit dialing is not necessary, time and mathematics dictate that Orange County adopt the practice.

The CPUC’s request for permanent waiver of the ten-digit dialing requirement can be viewed as a red herring. One obvious reason California does not want to convert to ten-digit dialing is so that it can circumvent the state’s requirement for 1+ ten-digit dialing. California could easily resolve this tension by removing the 1+ requirement. The waiver request also obscures the fact that the proposed TSO is designed to affect wireless customers in order to shield landline customers from inconvenience. The CPUC apparently views wireless customers as users of choice, and views landline customers as a protected class. The CPUC cannot admit to this attitude because no legal authority exists for such discriminatory treatment of wireless users.

Nextel offers a practical discussion of why maintaining seven-digit dialing in major metropolitan areas is a very bad idea. It describes the situation in New York City where there are active NXXs (in the underlying, preexisting area code) that are identical to the overlay NPAs.

Because there is no ten-digit dialing requirement, the landline network sometimes routes the first seven digits rather than waiting for the full ten digits. RCA joins Nextel in its suggestion that the benefit of wireless customers being able to dial only seven digits to reach another wireless customer is weak compared to the proposed disruption and potential for misrouting.

The State of New York Department of Public Service makes the point that with the imposition of the TSO all wireless carriers will be on an equal footing since all wireless customers will be in the overlay area codes; there will be no dialing disparity among wireless users. This assertion misses the point that there will be disparity. It will be between wireless subscribers and landline subscribers, and that is discriminatory.

RCA concurs with Commenters who assert that seven-digit dialing discriminates in favor of landline customers. The number of times wireless customers must dial ten digits greatly exceeds the number of times landline customers must dial ten digits. Therefore the FCC cannot grant the CPUC's request for a permanent waiver of the ten-digit dialing requirement. RCA agrees with Sprint Corporation that the requested waiver would contravene the dialing parity requirement contained in Section 251(b)(3) of the Communications Act, and that the Commission cannot waive a statutory requirement.

Conclusion

The CPUC's Petition should be denied quickly so that the CPUC can immediately begin to implement an all-services overlay. While number pooling may provide some relief to the current strains on numbering resources, as suggested by WebLink Wireless, Inc., RCA agrees that more comprehensive area code relief is necessary. Its costs and inconveniences must be shared by all carriers and customers. Relief in the form of an all-services overlay would conserve resources and be competitively neutral, allowing existing subscribers to keep their phone numbers and conduct their lives and business in an uninterrupted manner.

Respectfully submitted,

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December 10, 2002

CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 10th day of December, 2002, sent by hand-delivery, a copy of the foregoing REPLY COMMENTS to the following:

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